



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

November 27, 2012

REPLY TO THE ATTENTION OF

VIA E-MAIL: kelly.richardson@lw.com

C-14J

Kelly E. Richardson
Latham & Watkins
600 W. Broadway, Suite 1800
San Diego, CA 92101-3375

Re: Comments on the Selected Sediment Remedy for the Ashland/Northern States
Power Lakefront Superfund Site

Dear Mr. Richardson:

I am in receipt of your letter dated November 4, 2012, on behalf of the Northern States Power Company of Wisconsin ("NSPW"). We appreciate NSPW's willingness to perform the baseline geotechnical investigation proposed in EPA's comments dated October 30, 2012 on the Draft Phase 1 Pre-Design Study Work Plan (PDWP) dated October 11, 2012. That baseline geotechnical investigation will involve borings along the shoreline to adequate depth into the Miller Creek Formation to assure that sheet piling can be installed as part of the Phase I work. The borings can also be used to determine the thickness and properties of the Miller Creek Formation to help assess potential construction issues/concerns during the Phase 2 sediment removal.

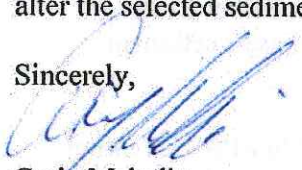
As described in my October 23rd letter, basal heave was first brought to EPA's attention at a technical meeting on May 29, 2009, after completion of the remedial investigation and feasibility study ("RI/FS"), and just prior to and during the public comment period on the Proposed Plan, dated June 2009, that led to the selection of the hybrid sediment remedy in the Record of Decision dated September 30, 2010 ("ROD"). As EPA's oversight contractor, Weston Solutions, Inc., helped EPA evaluate and respond to the public comments, including NSPW's comments on basal heave and related issues. At NSPW's request, EPA agreed to extend the public comment period on the Proposed Plan. The public comment period was extended to August 17, 2009. The Weston Memo, dated November 2009, following the close of the public comment period, is part of EPA's response to comments contained in the Responsiveness Summary attached to the ROD. The Weston Memo was added to the administrative record under Update #2 dated September 15, 2010.

Now that the ROD has been signed and the hybrid remedy selected, the relevant provision of the NCP is 40 C.F.R. 300.825. Under §300.825(a), EPA may add documents to the administrative record after the ROD is signed if: 1) the documents concern a portion of a

response action decision that the ROD does not address or reserves to be decided at a later date; or 2) an explanation of significant difference or ROD amendment is issued, in which case all documents that form the basis for the decision to modify the selected remedy shall be added. At this time neither of the circumstances described above apply that would cause EPA to add the materials you have submitted to the administrative record. The ROD did not, as your letter states, reserve the sediment remedy to be decided at a later date. The ROD selected the hybrid remedy but allowed for the performance of a pilot test to determine whether a wet dredge remedy for the nearshore sediments could meet the performance standards. If a pilot test is conducted and proves a wet dredge remedy can be performed, then the ROD states EPA will modify the remedy and document the change through an explanation of significant difference. The situation described in §300.825(a)(1), therefore, does not apply. If, in the future, EPA modifies the selected sediment remedy, and the information in your October 15th letter and attachments form a basis for that decision, EPA will add your letter and supporting materials to the administrative record under §300.825(a)(2).

Under 40 C.F.R. 300.825(c), EPA must consider comments submitted after the close of the public comment period only to the extent that the comments contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. NSPW had every opportunity to comment, and in fact did comment, on the proposed sediment remedy. EPA considered and responded to those comments in the Responsiveness Summary. As discussed above, the Weston Report was developed as part of EPA's response to those comments and was included in the administrative record for the Site. EPA and WDNR are reviewing your October 15th letter and attachments and if this material contains significant information not contained elsewhere in the record which could not have been submitted during the comment period and which substantially support the need to significantly alter the selected sediment remedy, then EPA will add your submittal to the record at that time.

Sincerely,



Craig Melodia
Associate Regional Counsel

cc: Lacey Cochart, WDNR